

Date: October 27, 2004 Planning Commission Meeting

Item No. **2**

## MILPITAS PLANNING COMMISSION AGENDA REPORT

---

Category: Public Hearing

Report Prepared by: Troy Fujimoto

Public Hearing: Yes:   X   No:       

Notices Mailed On: 10/14/04

Published On: 10/14/04

Posted On: 10/15/04

---

**TITLE:** USE PERMIT NO. UP2004-28

**Proposal:** A request for a nine (9) parking space reduction in the parking space requirement for a funeral supply store

**Location:** 27 Winsor Street

**APN:** 028-24-028

**RECOMMENDATION:** Approval with Conditions

**Applicant:** Kenos, Inc.- 27 Windsor Street, Milpitas, CA 95135, Attn: Willis Lee

**Property Owner:** Jessie Singh, 720 Montague Expressway, Milpitas, CA 95035

**Previous Action(s):** "S" Zone Approval, GPA, Rezoning, Use Permit

**General Plan Designation:** Mixed Use

**Present Zoning:** Mixed Use with a Transit and "S" Zone Overlay (MXD-TOD-S)

**Existing Land Use:** Funeral Supply Store

**Agenda Sent To:** Applicant/Owner, at noted above

**Attachments:** Plans

PJ#2397

---

### BACKGROUND

The current building received "S" Zone approval in 1971. Subsequent "S" Zone Amendments followed and were for improvements such as a roof screen and a sign. In November 2001, the Planning Commission granted a use permit and "S" Zone approval for an auto body shop.

### Site Description

The funeral supply store is located in a 6,700 square foot facility. The site is located within the Midtown Specific Plan and was rezoned from General Commercial to Mixed Use. However, the existing uses in the area were approved under the previous General Commercial zoning

designation. Surrounding uses include auto-related businesses, gas station, preschool facility, religious facilities, restaurants, residential and public facilities.

### **THE APPLICATION/PROJECT DESCRIPTION**

This Use Permit No. P-UP2004-28 application is submitted pursuant to Section 57.02-18 (Conditional Uses, Permit the modification of automobile parking space requirements) of the Milpitas Zoning Ordinance. The applicant is requesting a nine (9) parking space reduction in the parking requirement for the retail funeral supply store.

### **ISSUES**

#### **USE PERMIT FINDINGS**

Any approval of a Use Permit or Use Permit Amendment requires that the Planning Commission make the following findings:

1. The proposed use is consistent with the Milpitas Zoning Ordinance.
2. The proposed use is consistent with the Milpitas General Plan.
3. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

The following sections explain how the proposed project, as conditioned, enables the above findings to be made.

#### **Parking**

Pursuant to Section 53.23-2 part (5) of the Milpitas Zoning Ordinance, the required parking for the retail funeral supply store, based on 6,700 square feet, is 19 spaces (1 space per 350 gross square feet). Given the eight (8) parking spaces on the site and the inability to create on-site parking, the facility requires nine (9) more parking spaces.

A reduction in the parking requirement could be granted if the applicant proves that they have adequate parking supply. This can be accomplished through the following ways:

1. Perform a parking analysis/survey of the site that justifies that there is either adequate parking at the site to accommodate the use during its peak hour of usage or that the use does not create a situation where there is not enough parking to accommodate all of the uses that occur on the site.
2. Perform a parking analysis/survey of a similar (size, intensity, operations) site to the proposed use that justifies that the new use will not have a bigger parking impact than can currently be accommodated at the site.
3. Provide additional off-site parking that is no farther than 300 feet from the subject parcel and is recorded against the property.
4. Verify that different uses on the parcel have different peak parking demand periods, thus, allowing a lower parking ratio due to shared parking opportunities.

Any of these options are available to the applicant to justify the parking requirement reduction. However, because the use is located in the Mixed Use district in the Midtown Specific Plan, there is another option available to the applicant to justify a parking reduction.

Throughout the Midtown area, in the Mixed Use (MXD) zoning district (mainly along Main and Abel Street), parking districts will be created throughout the area that will allow business owners to participate. The purpose of the parking district is to support public parking lots that will eventually be located throughout this portion of the City and free up more land within the area for non-parking lot usage. Business/property owners that choose to participate will contribute monies to the district (as part of a yet-to-be-determined tax levied on properties/business). The amount that each property/business owner contributes is calculated based on amount of parking spaces needed for their use.

As part of the proposed library project there will be a parking structure that is in close proximity to the funeral supply store. With the opening of the parking structure the first parking district will be created. Thus, the opportunity is available for this applicant to participate in the parking district and not have to provide all of their required parking on-site. When presented with this opportunity, the applicant chose to participate in the parking district for nine parking spaces. Because the plans and cost structure for the district have not been finalized, *staff recommends* the applicant participate an amount equal to 250 dollars per space, per year. In addition, for purposes of ongoing maintenance, the rate will increase yearly in accordance with the consumer price index, beginning July 1, 2007. Until the parking structure is built overflow parking can be accommodated by street parking and at the nearby City parking lot (under the Calaveras Boulevard overpass).

It should be noted that the applicant can opt out of the parking district if at any time they are able to justify to the City that eight (8) parking spaces are adequate for their use. If proven, a use permit amendment will be required and they will not be required to participate in the parking district.

If the applicant becomes delinquent in their yearly agreement they will become subject to a use permit revocation process. At the time that the use permit is revoked, they will not have adequate parking supply and will have to cease all operations.

### **Conformance with the Zoning Ordinance and General Plan**

Parking reductions (modifications) are granted through the conditional use process. Parking reductions are allowed if proven through surveys and historical evidence that the reduction will not impact the site or neighboring properties.

In this case the applicant is proposing to participate in the future parking district that will be in close proximity to the subject site. The parking district will have a supply of parking that any businesses will be able to access, through participation in the parking district, which will provide parking for their patrons.

The proposed use permit does not conflict with any General Plan policies, and is consistent with Policy 2.a-I-3, which will help to encourage pursuits, which will strengthen and promote development through stability and balance. Without the parking reduction, the retail funeral supply store would not be able to locate at this location.

2.

### **Neighborhood/Community Impact**

As conditioned, this use permit is not expected to have any impact on the existing community and neighborhood. By allowing the parking reduction, residents of the City will have nearby access to a retail funeral supply store, which because of its specialized business is not commonly found. This will prevent residents from having to travel far distances to access this type of business.

### **RECOMMENDATION**

Close the public hearing. Approve Use Permit No. P-UP2004-28, based on the Findings and subject to the Special Conditions listed below:

### **FINDINGS**

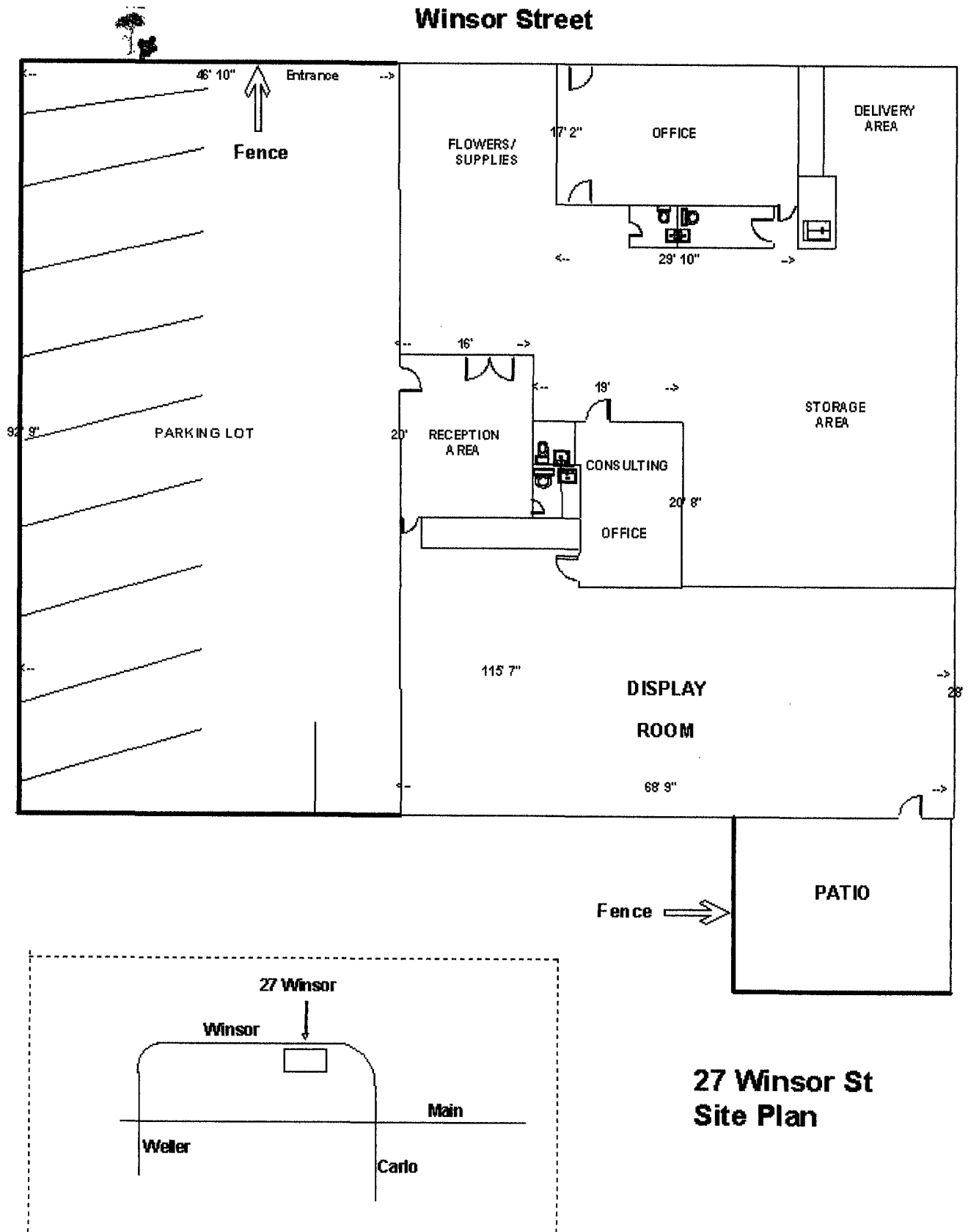
1. This Use Permit is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the State CEQA Guidelines.
2. As conditioned, this Use Permit is in conformance with the City's zoning ordinance and general plan, as it will not result in any impacts to the surrounding neighborhood.
3. As conditioned, this Use Permit will not be detrimental or injurious to the public health, safety, and general welfare to adjacent future property owners and tenants or the surrounding community because the applicant will participate in a future parking district.

### **SPECIAL CONDITIONS**

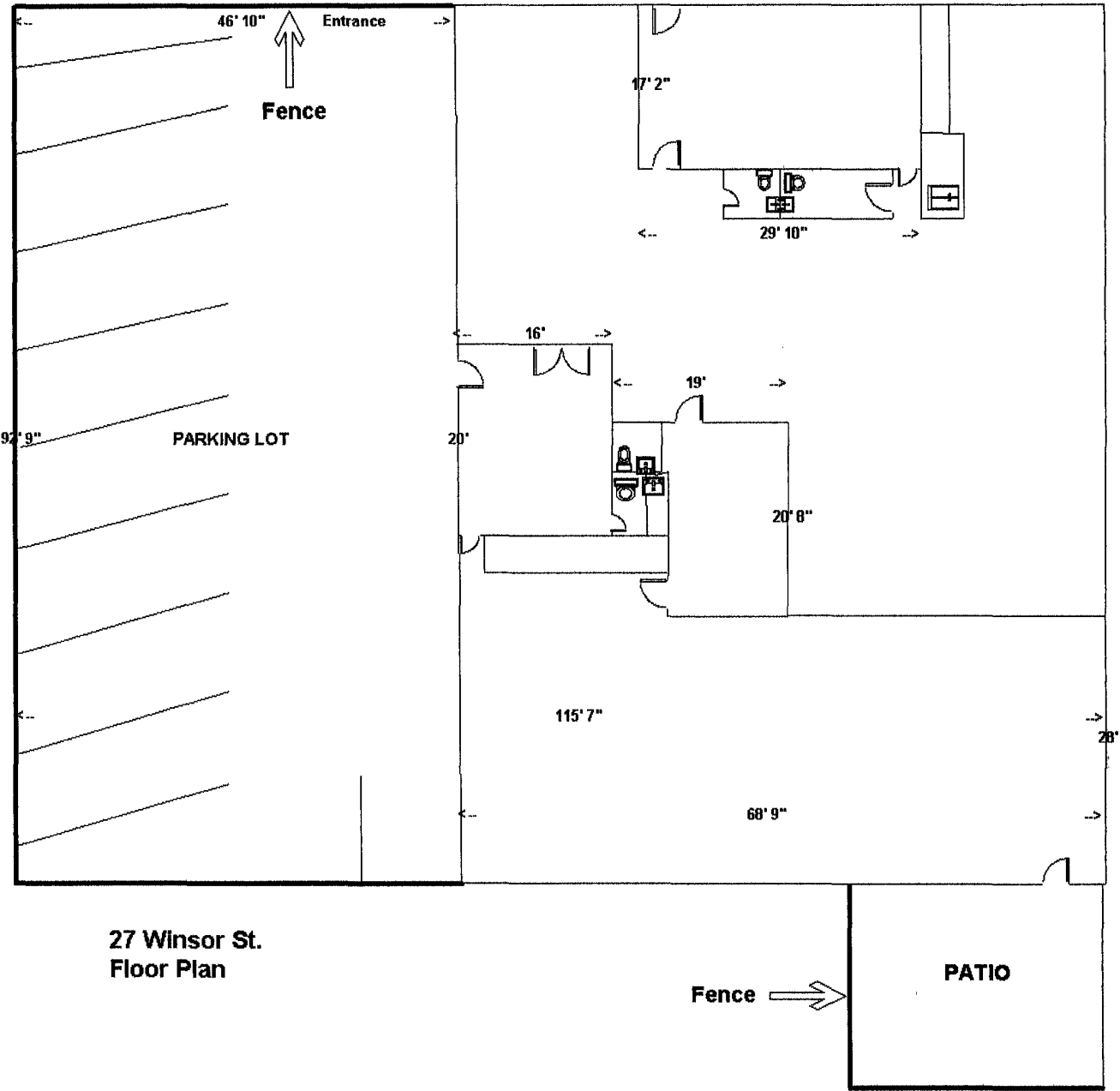
1. Use Permit No. UP2004-28 is for a nine (9) space parking reduction at 27 Windsor Street. Any reduction of number of parking spaces, or change in use shall require review and approval by the Planning Commission of an amendment to this Use Permit. (P)
2. This use shall be conducted in compliance with all appropriate local, state and federal laws and regulations and in conformance with the approved plans. (P)
3. For purposes of the parking district, the applicant shall participate for an amount equal to 250 dollars per space, per year. The first payment shall not be due until formation of the parking district. In addition, for purposes of ongoing maintenance, the rate will increase in accordance with the consumer price index beginning July 1, 2007. (P)
4. If bi-annual payments for participation in the parking district are not received, staff will initiate the use permit revocation process for the parking reduction. (P)
5. The applicant may be released from the requirement of participating in the parking district, if additional on-site parking is created or if the applicant can justify to the Planning Commission (through a use permit amendment) that the nine additional parking spaces are no longer needed. (P)
6. If at the time of application for any permit or occupancy, there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)

(P) = Planning Division

2.



Winsor Street



27 Winsor St.  
Floor Plan